

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1998)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
MD Docket No. 98-36

Comments of ARDIS Company

In accordance with Section 1.429(f) of the Commission's Rules, ARDIS Company ("ARDIS") hereby submits these comments in support of the Petition for Reconsideration filed by BellSouth Wireless Data L.P., ("BellSouth WD") on July 31, 1998, in the above-captioned proceeding.¹ ARDIS supports BellSouth WD's request that the Commission reconsider that portion of the *1998 Regulatory Fees Order* placing all CMRS Specialized Mobile Radio Service ("SMR") licensees in the CMRS Mobile Services fee category regardless of the amount of spectrum held by such licensees or the type of service provided.

ARDIS asks that, on reconsideration, the Commission reclassify as CMRS Messaging Services those 800 MHz and 900 MHz SMR licensees that compete with other offerings included in the CMRS Messaging fee category. In the alternative, ARDIS supports creation of a new CMRS Broadband Messaging Service Category that recognizes the unique position of such offerings. Failure to implement such steps, *i.e.*, retention of the current fee structure, will cause

¹ BellSouth Wireless Data, L.P., Petition for Reconsideration, MD Docket No. 98-36 (filed July 31, 1997) [hereinafter *BellSouth WD Petition for Reconsideration*]. See also *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98-36, FCC 98-115 (rel. June 16, 1998) [hereinafter *1998 Regulatory Fees Order*].

BellSouth WD and ARDIS, providers of non-voice, packet data services, to pay a regulatory fee seven times that paid by the services with which these entities compete, directly violating Congress's mandate that competing mobile service providers be subject to comparable regulatory requirements.

I. The Commission's Continued Inclusion Of All CMRS SMR Licensees In The CMRS Mobile Services Fee Category Violates Congress's Mandate That Competing Mobile Services Be Subject To Comparable Regulatory Requirements

In the *1997 Regulatory Fees First Report and Order*,² the Commission amended its fee schedule to create two CMRS fee categories – the CMRS Mobile Services category, which includes broadband CMRS services,³ and the CMRS Messaging Services category, which includes narrowband CMRS services.⁴ The classification of a particular CMRS offering in either of these categories was premised on whether the spectrum is considered “broadband” or “narrowband.” Licenses authorizing CMRS operations on *broadband* spectrum were subject to the CMRS Mobile Services fee regardless of the amount of spectrum held or service offered on such spectrum, and licenses authorizing the provision of CMRS services on *narrowband* spectrum were subject to the CMRS Messaging Services fee regardless of the amount of

² *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161 (1997).

³ The CMRS Mobile Services category includes Specialized Mobile Radio Services (Part 90), Personal Communications Services (Part 24), Public Coast Stations (Part 80), Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiophone, and Offshore Radio Services regulated under Part 22).

⁴ The CMRS Messaging Services category includes private paging, interconnected Business Radio Services, 220-222 MHz Land Mobile Systems, Public Mobile One-Way Paging, and licensees of Personal Communications Services one-way and two-way paging.

spectrum held or services offered.⁵ The CMRS Mobile Services fee in 1997 was \$.24 per unit; the CMRS Messaging Services fee was \$.03 per unit.

Ram Mobile Data USA Limited Partnership ("RMD"), which is now BellSouth WD, filed a Petition for Reconsideration of the *1997 Fees Order* in which it challenged the Commission's revised classification scheme.⁶ RMD argued that the classification of all CMRS SMR licensees as CMRS Mobile Services is inappropriate as applied to those SMR systems that lack the spectrum capacity to compete with other broadband services included in the CMRS Mobile Services category. RMD pointed out that, because such operators compete with other services classified as CMRS Messaging Services, imposition of an eight times greater fee obligation is unfair and violates the concept of regulatory parity. ARDIS supported RMD's petition.⁷

Without addressing the issues raised by RMD and ARDIS, the Commission's *1998 Regulatory Fees Order* follows the same classification scheme.⁸ In addition, this year, ARDIS and BellSouth WD are required to pay \$.29 cents per mobile unit while their competitors in the

⁵ *1997 Regulatory Fees First Report and Order*, ¶¶ 60-61.

⁶ See RAM Mobile Data USA Limited Partnership, Petition for Reconsideration, MD Docket No. 96-186 (filed July 28, 1997).

⁷ See Comments of ARDIS Company, MD Docket No. 96-186 (filed Oct. 31, 1997).

⁸ Although BellSouth WD also raised these arguments in response to the Commission's Notice of Proposed Rule Making concerning the 1998 fee schedule, the *1998 Regulatory Fees Order* failed to address BellSouth WD's claims.

CMRS Messaging Services fee category pay \$.04 cents per unit.⁹ BellSouth WD has filed a request for reconsideration of the *1998 Regulatory Fees Order*, which ARDIS hereby supports.

BellSouth WD points out that, as a result of the system of classification used by the Commission and the FCC's prior determination that SMR services are offered on "broadband" spectrum, all CMRS 900 MHz SMR licensees are required to pay the CMRS Mobile Services fee of \$.29 per unit despite the fact that the pattern of licensing and actual spectrum usage in the 900 MHz SMR service are far more consistent with the services grouped in the CMRS Messaging Services category.¹⁰ BellSouth WD contends that inclusion of 900 MHz SMR licensees in the CMRS Mobile Services fee category without regard to the amount of spectrum a particular licensee holds is, therefore, contrary to the principle of regulatory parity and imposes inordinate costs on BellSouth WD relative to its competitors.¹¹

Once again, these concerns are equally applicable to ARDIS. Although ARDIS holds 800 MHz as opposed to 900 MHz SMR licenses, ARDIS, like BellSouth WD, does not have access to anywhere near the amount of spectrum necessary to compete with other "broadband" licensees in the CMRS Mobile Services fee category. In fact, most of ARDIS's 800 MHz SMR licenses are site-specific and offer access to a single 25 *kHz* channel pair. By comparison, 25 *MHz* of spectrum are available to cellular carriers and 10 *MHz* or 30 *MHz* are available to PCS carriers included in the CMRS Mobile Services fee category. Even if a site-specific 800 MHz SMR operator, such as ARDIS, is able to secure a license for more than one channel, the quantity

⁹ See *1998 Regulatory Fees Order*, ¶ 42.

¹⁰ *BellSouth WD Petition for Reconsideration*, at 2-4.

¹¹ *Id.* at 4-7.

of spectrum available to cellular and broadband PCS operators is an order of magnitude greater – ten 25 kHz channel pairs still yield only 2 percent of the spectrum assigned to each cellular provider.

Because of these spectrum constraints, the mere fact that SMR spectrum is defined as “broadband” cannot be understood to imply that all CMRS SMR systems are capable of competing with other broadband CMRS offerings. ARDIS, BellSouth WD, and other SMR systems at both 800 MHz and 900 MHz face spectrum limitations that make the services they offer more like the narrowband services included in the CMRS Messaging category. Indeed, like BellSouth WD, ARDIS competes with 220 MHz, narrowband PCS, interconnected Business Radio Service, and paging offerings included in the CMRS Messaging Services category. ARDIS does not directly compete with cellular or broadband PCS services.

Furthermore, the spectrum limitations faced by site-specific SMR licensees significantly reduce the amount of data these operators are able to transmit and the number of customers they can serve.¹² As a result, most site-specific SMR operators target their services toward specialized niche markets. For example, ARDIS offers a number of niche applications including: (1) instant checking of drivers’ records by law enforcement officers; (2) ordering of parts, machine histories, and billing information by field service personnel; and (3) processing of data for the pick-up and delivery of rental cars by customer service personnel. These offerings are much more closely akin to those provided by licensees in the CMRS Messaging Services category than those offered by cellular or broadband PCS entities. Cellular and broadband PCS data

¹² Indeed, while cellular and broadband PCS systems can devote several hundred channels to data-based applications, the entire ARDIS system in many cities is limited to a single pair of 25 kHz channels.

applications are typically targeted to much broader markets because they can be bundled in a single package with voice and other offerings.

For these reasons, ARDIS agrees with BellSouth WD that the inclusion of all CMRS SMR licensees in the CMRS Mobile Services fee category – without regard to the amount of spectrum held by such entities or their ability to compete with other broadband CMRS offerings – violates Congress's mandate that competing mobile service providers be subject to comparable regulatory requirements.¹³ In particular, the Commission's decision imposes a seven times greater per unit regulatory fee on site-specific CMRS SMR operators vis-a-vis their competitors simply because SMR systems happen to be licensed on "broadband" as opposed to "narrowband" spectrum. To avoid this result, ARDIS agrees with BellSouth WD that the Commission should reclassify these services into the CMRS Messaging Services category along with those CMRS services with which they compete, or create a new CMRS Broadband Messaging Services category that recognizes the unique positions of offerings such as those provided by BellSouth WD and ARDIS.¹⁴

¹³ See *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7988, 7993 (1994) (citing the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 392 (1993)).

¹⁴ ARDIS has submitted its regulatory fees for fiscal year 1997 in accordance with the classificatory scheme established in the *1997 Regulatory Fees First Report and Order*. The company will likewise submit its regulatory fees for fiscal year 1998. If ARDIS's classification is changed on reconsideration, ARDIS requests a refund of the amount overpaid.

II. Conclusion

For the reasons set forth above, ARDIS supports the petition for reconsideration filed by BellSouth WD requesting that the Commission reconsider that portion of its decision in the 1998 *Regulatory Fees Order* classifying all CMRS SMR licensees as CMRS Mobile Services. This classification is inappropriate as applied to numerous 800 MHz and 900 MHz SMR systems that lack the spectrum capacity to compete with other broadband services included in the CMRS Mobile Services fee category. Furthermore, the Commission's decision imposing a \$.29 per unit regulatory fee on SMR licensees, such as ARDIS, that compete with narrowband entities classified as CMRS Messaging Services and that are subject to a fee of \$.04 per unit, contravenes Congress's mandate that competing mobile services be subject to comparable regulatory requirements.

Respectfully submitted,

ARDIS Company

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Dated: September 4, 1998

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 4th day of September 1998, a true copy of the attached "Comments of ARDIS Company" has been served, via first class, postage prepaid mail, on the following persons:

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